IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 17400 of 2000

Between:

G.Varaprasad, S/o G.W.Kaladhar,
R/o 2-8-295, Near Holy Cross High School, Waddepally,
Hanamkonda, Warangal District.

..... PETITIONER

AND

1 The Industrial Tribunal-cum -Labour Court,
Rep by its Presiding Officer, Warangal.
2 The Zonal Manger, L.I.C. of India, South Central Zone,
Jeevan Bhagya, Saifabad, Secretariat Road, Hyderabad-63.
3 The Divisional Manger, L.I.C. of India, Balasamudram,
Hanamkonda, Warangal District.
4 The Divisional Manger, L.I.C. of India, Karimnagar
Divisional Office, Karimnagar.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for records from the 1st Respondent and issue an appropriate writ, order or direction particularly one in the nature of Writ of Certoirari and quash the Award passed by the 1st Respondent in I.D.No.C.7 of 1997 dt 31-1-2000, published on 8-7-2000 as illegal, unjust, contrary to law and perverse and grant all consequential benefits.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent s 2 to 4: Sri D.V.Seetha Ramamurthy, Standing counsel.

The Court made the following :

O R D E R :

Heard sri A.K.Jayaprakash Rao, learned counsel appearing for the petitioner and Sri D.V.Seetha Ramamurthy, learned standing counsel appearing on behalf of the respondents 2 to 4 and the learned Government Pleader for Labour appearing on behalf of the first respondent.

The petitioner, who has been an employee with the respondents 2 to 4-corporation, filed this Writ Petition, *inter alia,* seeking for a Writ of Certiorari challenging correctness of the award passed in I.D. No. C.7 of 1997, dated 31.01.2000 as published in gazette on 08.07.2000 as illegal and void.

The case of the petitioner, in brief, is that he has been appointed initially as Assistant in the corporation on 10.07.1987 and subsequently his services were confirmed on 10.01.1988. While he was working at Ramagundam branch office, on certain allegations, he was kept under suspension as per order dated 11.07.1999 passed by the Senior Divisional Manager, Warangal. This was followed by issuance of charge sheet on 11.02.1991 and thereafter he submitted a representation on 25.03.1991 with certain requests. However, an Enquiry Officer was appointed and the petitioner's requests to have assistance of an advocate or an outside person, were negatived. According to the petitioner, no proper opportunity has been given to him nor any proper material is taken on record as per law. The Enquiry Officer submitted a report, whereupon the petitioner was removed from service on 29.02.1996. After exhausting remedy of appeal, which was rejected, the petitioner raised a dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 and the same was taken up as I.D. No. C.7 of 1997.

The main grievance of the petitioner is that the impugned award is passed without properly conducting an enquiry or taking evidence or

the material on record as required under law, confirming the termination orders issued against the petitioner on 29.02.1996. Hence, the Writ Petition.

Sri A.K.Jayaprakash Rao, learned counsel appearing for the petitioner submits that the Labour Court ought not to have proceeded to straight away rely on the enquiry report or the material as such, without going into the validity of the domestic enquiry and confirmed the charges and findings thereon, and so, the impugned award is illegal.

Sri D.V.Seetha Ramamurthy, learned standing counsel appearing on behalf of the respondents 2 to 4 sought to sustain the award on the ground that having regard to ample evidence available on record, the findings of Labour Court are perfectly valid.

Considering the submissions made and on perusal of the material, the question which has to be considered in this Writ Petition is as to whether the impugned award of the first respondent in confirming the termination orders of the petitioner, is sustainable in law ?

There is no dispute to the fact that the petitioner was an employee and having regard to certain allegations, he was initially suspended and ultimately, a charge sheet was issued on 11.02.1991, which reads as follows:

1. "that you have unauthorisedly taken delivery of the following loan payment cheques without any authority from the policy-holders concerned. The applications for these loans were submitted with the forged signature/thumb impression of the policy-holders without their knowledge and consent. These policies were in lapsed condition without acquiring any value. However, the premium position was tampered with in such a way to show that the policies become eligible for loans and accordingly loan payments were made. Further, you with a malafide intention

destroyed the policy file, loan ledger sheet and policy ledger sheet in respect of policy number appearing at serial no. 1 & 2 –

s.no. Policy no. Name of policy Loan Cheque no. &

holder amt. Date

1. 46900075 Mohd. Hussain Rs.6000/- 268779

dt.18.6.90

2. 46900260 V.Ramaswamy Rs.5670/- 26840,

dt. 7.6.90

2. That you have fraudulently encashed the above cheques through Bank Account of Shri P.Ashok, Agent of Ramagundam B.O. with Andhra Bank, Ramagundam and received the proceeds of the cheques from Shri P.Ashok. Thus, you have misappropriated the funds belonging to the Corporation and derived illegally under pecuniary benefit from these transactions.

3. That you have taken cash payment of loan of Rs.1,000/- on 2.6.1999 pertaining to policy no. 60906122 by identifying a person other than the policy-holder Shri B.Ramaswamy as the policy-holder. Thus, you have misappropriated the funds belonging to the Corporation and derived illegally undue pecuniary benefit from these transactions.

4. That you have been found to be unauthorisedly in possession in your house the following undelivered policy documents which were taken by you from the Branch Office. You returned these 13 policy documents to Shri S.Srinivasa Rao, Administrative Officer through Shri K.Visweswara Rao, Development Officer, on 29.6.90.

1. 45804509 2. 45850031 3. 45895590 4. 46900370

5. 45804498 6. 45895593 7.46888436 8.46900091
9.60595156 10. 60595406 11. 60595442 12.60597165

13. 60599659

It is in respect of these charges, the enquiry was sought to be conducted and the petitioner's request for legal assistance was

negatived. In the enquiry, it was held in respect of charges 1,2 and 4 that the same are not proved. However, it is only in regard to charge no.3 the petitioner was found guilty and ultimately, he was removed from service basing on the report of the enquiry officer. After reference to the first respondent, it is seen, on reading of the entire award, that even though certain points for consideration have been framed, however, no attempt was made on either side to lead any evidence in support of their respective contentions. Neither the enquiry proceedings nor any part of its record was properly marked nor any witness was examined on behalf of the management. Even the petitioner himself could not come into witness box in support of his explanation. However, the entire such record as formed part of the enquiry, was sought to be relied on and gone into, and ultimately it was found that the finding against the said charge is perfectly valid. It is now well settled that having regard to the provisions under Section 11-A of the Industrial Disputes Act, though the scope is very limited, however, it is necessary that the Labour Court should give a finding on the preliminary issue as to whether the domestic enquiry is valid or not. In case where such finding is given to the effect that the domestic enquiry is invalid, entire burden casts on the management to prove the charge as made against the petitioner with independent evidence and the question of relying on any part of the enquiry proceedings does not arise. It should also be followed by the opportunity to be provided to the worker for rebuttal. However, in this case, neither there is any finding in regard to the validity of the domestic enquiry either preliminary or otherwise, nor there is any enquiry where both sides have been permitted to lead evidence. The entire procedure as followed in this case is wholly unsustainable and the same is in the teeth of law and the principles as laid down. In the circumstances, the matter requires to be reconsidered afresh by the first respondent by giving proper opportunity to both the sides.

The Writ Petition is, accordingly, allowed, remitting back the matter to the first respondent for a fresh enquiry by giving opportunity to both

sides and disposal of the same on merits in accordance with law. No costs.

The first respondent shall dispose of the case within three months from the date of receipt of papers.

(B.Prakash Rao, J.)

09.02.20005

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on

Wednesday, the ninth day of February two thousand and five.

… Registrar

Copy to:

1 The Presiding Officer, Industrial Tribunal-cum -Labour Court, Warangal.
2 The Zonal Manger, L.I.C. of India, South Central Zone,
Jeevan Bhagya, Saifabad, Secretariat Road, Hyderabad-63.
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Hanamkonda, Warangal District.
4 The Divisional Manger, L.I.C. of India, Karimnagar
Divisional Office, Karimnagar.

5 Two CCs to the G.P. for Labour, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

6 Two CD copies.

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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09.02.2005